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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,469	09/25/2001	Thomas Eckel	MO6621/LEA33.592	9518

157 7590 05/14/2003  
BAYER POLYMERS LLC  
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EXAMINER

SZEKELY, PETER A

ART UNIT 1714 PAPER NUMBER 3

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No.	Applicant(s)
	09/937,469	ECKEL ET AL.
	Examiner	Art Unit
	Peter Szekely	1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 September 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- 1. Certified copies of the priority documents have been received.
- 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 6, 11, 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 2 (2x), 6, 11 (2x) and 15 contain improper Markush language. Claims 11 and 15 are indefinite because of the phrase "derivatives of unsaturated carboxylic acids". Carbon dioxide is a derivative of unsaturated carboxylic acids. It is derived by burning.

4. Claim 17 provides for the use of the molding composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 17 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Bayer DE 197 34 661, Bayer DE 197 21 628 (Eckel et al. US2002/0072553 as translation), Bayer DE 198 01 050 (Eckel et al. 6,326,423 as translation), Bayer DE 198 56 484 (Zobel et al. 6,414,107 as translation), Bayer DE 197 34 667 (Eckel et al. 6,441,068 as translation) or General Electric EP 0 755 977.

7. Bayer ('661) discloses applicants' composition on page 8, lines 1-66. Eckel et al. ('553) teach the composition in the Abstract, while the coagulated mixture is shown in paragraphs 0127-0129. Eckel et al. ('423) recite everything but PTFE in claim1, PTFE and additives in claim 12 and coagulated mixture in column 13, lines 29-50. Zobel et al. divulge polycarbonate in claim 1, PTFE in claim 7, ABS in claim 9, phosphate in claim 11 and coagulated PTFE in column 13, lines 15-36. Eckel et al. ('068) reveal applicants' composition in the Abstract and coagulated PTFE in column 12, lines 29-51. General Electric displays polycarbonate in the Abstract, phosphates on page 2, lines 50-59, ABS on page 5, line21 and precompounded PTFE on page 5, lines 44-45. Applicants' claims are not novel.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckel et al. 5,672,645, Kohler et al. 5,750,602 or Eckel et al. 5,994,463.

10. Eckel et al. ('645) present applicants' composition in the Abstract and coagulated PTFE in column 11, lines 11-35. Kohler et al. describe polycarbonate and ABS in claim 1, phosphates in claim 2, additives in claim 5 and coagulated PTFE in column 10, lines 5-27. Applicants' claims are not novel.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckel et al. RE 36,902 or Eckel et al. 5,994,463.

13. The "RE" document is the reexam of 6,672,645. Eckel et al. discuss polycarbonate and ABS in the Abstract, phosphates in claim7 and coagulated PTFE in column 8, lines 44-56. Applicants' claims are not novel.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references in paragraphs #7, #10 and #13, in view of Lo et al. 5,804,654.

17. Lo et al. show precompounding PTFE with a slew of polymers including SAN and ABS in claims 1-12. It would have been obvious to one having ordinary skill in the art, at the time the invention was made to improve the fire resistance, the tensile strength, the elongation and the impact strength of the resulting composition.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
May 12, 2003